

§ 295.35

reopen is filed not later than August 28, 2002; or

(3) The Claimant has incurred Replacement Costs under § 295.21(d) in excess of those previously awarded and is not prohibited by the terms of an agreement pertaining to home replacement with OCGFC from requesting that the case be reopened; or

(4) The Director of OCGFC otherwise determines that Claimant has demonstrated good cause.

(b) The Director of OCGFC may establish a deadline by which requests to reopen under paragraphs (a)(3) or (4) of this section must be submitted. The deadline will be published as a notice in the FEDERAL REGISTER and broadly disseminated throughout the communities, pueblos and Indian reservations in Los Alamos, Rio Arriba, Sandoval, and Santa Fe Counties.

§ 295.35 Access to records.

For purpose of audit and investigation, a Claimant will grant the FEMA Office of the Inspector General and the Comptroller General of the United States access to any property that is the subject of a claim and to any and all books, documents, papers, and records maintained by a Claimant or under the Claimant's control pertaining or relevant to the claim.

§ 295.36 Confidentiality of information.

Confidential information submitted by individual Claimants is protected from disclosure to the extent permitted by the Privacy Act. These protections are described in the Privacy Act Notice provided with the Notice of Loss. Other Claimants should consult with FEMA concerning the availability of confidentiality protection under exemptions to the Freedom of Information Act and other applicable laws before submitting confidential, proprietary or trade secret information.

Subpart E—Dispute Resolution

§ 295.40 Scope.

This subpart describes a Claimant's right to bring an Administrative Appeal in response to the Authorized Official's Determination. It also describes the Claimant's right to pursue arbitra-

44 CFR Ch. I (10–1–07 Edition)

tion or seek judicial review following an Administrative Appeal.

§ 295.41 Administrative appeal.

(a) *Notice of appeal.* A Claimant may request that the Director of OCGFC review the Authorized Official's Determination by written request to the Appeals Docket, Office of Cerro Grande Claims, P.O. Box 1480, Los Alamos, NM 87544-1480, postmarked or delivered within 120 Days after the date that appears on the Authorized Official's Determination. The Claimant will submit along with the notice of appeal a statement explaining why the Authorized Official's Determination was incorrect.

(b) *Acknowledgement of appeal.* OCGFC will acknowledge the receipt of appeals that are timely filed. Following the receipt of a timely filed appeal, the Director of OCGFC will obtain the Administrative Record from the Authorized Official and transmit a copy to the Claimant.

(c) *Supplemental filings.* The Claimant may supplement the statement of reasons and provide any additional documentary evidence supporting the appeal within 60 Days after the date when the appeal is filed. The Director of OCGFC may extend these timeframes or authorize additional filings either on his or her own initiative or in response to a request by the Claimant for good cause shown.

(d) *Admissible evidence.* The Claimant may rely upon any relevant evidence to support the appeal, regardless of whether the evidence was previously submitted to the Claims Reviewer for consideration by the Authorized Official.

(e) *Obtaining evidence.* The Director of OCGFC may request from the Claimant or from the Authorized Official any additional information that is relevant to the issues posed by the appeal in his or her discretion.

(f) *Conferences.* The Director of OCGFC may schedule a conference to gain a better understanding of the issues or to explore settlement possibilities.

(g) *Hearings.* The Director of OCGFC may exercise the discretion to convene an informal hearing to receive oral testimony from witnesses or experts. The

rules under which hearings will be conducted will be established by the Director of OCGFC. Formal rules of evidence applicable to court proceedings will not be used in hearings under this subsection. Hearings will be transcribed and the transcript will be entered in the Administrative Record.

(h) *Decision on appeal.* After the allotted time for submission of evidence has passed, the Director of OCGFC will close the Administrative Record and render a written decision on the Administrative Appeal. The Director of OCGFC's decision on the Administrative Appeal will constitute the final decision of the Director of FEMA under §§ 104(d)(2)(B) and 104(i)(1) of the CGFAA.

(i) *Claimant's options following appeal.* The Claimant's concurrence with the decision in the Administrative Appeal will be conclusively presumed unless the Claimant initiates arbitration in accordance with § 295.42 or seeks judicial review in accordance with § 295.43. If the Claimant concurs with the Director's determination, payment of any additional damages awarded by the Director will be made to the Claimant upon receipt of a properly executed Release and Certification Form.

§ 295.42 Arbitration.

(a) *Initiating arbitration.* A Claimant who is dissatisfied with the outcome of the Administrative Appeal may initiate binding arbitration by submitting a written request for arbitration to the Arbitration Administrator for Cerro Grande Claims, Alternate Dispute Resolution Office, Federal Emergency Management Agency, 500 C Street, SW., room 214, Washington, DC 20472 on a form provided by OCGFC. The written request for arbitration must be received not later than 60 days after the date that appears on the Administrative Appeal decision.

(b) *Permissible claims.* A Claimant may not arbitrate an issue unless it was raised and decided in the Administrative Appeal. Arbitration will be conducted on the evidence in the Administrative Record. Evidence not previously entered into the Administrative Record will not be considered.

(c) *Settlement and mediation alternatives.* At any time after a request for

arbitration is filed and before the time a decision is rendered, either party may request in writing that the Alternate Dispute Resolution Office stay further proceedings in the arbitration to facilitate settlement discussions. A mediator may be appointed (if requested by the parties) to facilitate settlement discussions. If both parties concur in the request, the Alternate Dispute Resolution Office will stay the arbitration and appoint a mediator at our expense. The stay may be terminated and the arbitration resumed upon written request of either party to the Alternate Dispute Resolution Office. If the dispute is settled, the Alternate Dispute Resolution Office will issue an order terminating the arbitration and provide the Claimant with a Release and Certification Form.

(d) *Selection of arbitrator.* Arbitrators will be selected from a list of qualified arbitrators who have agreed to serve provided by the Alternate Dispute Resolution Office. If the amount in dispute is \$300,000 or less, the arbitration will be decided by one arbitrator selected by the Claimant from the list. If the amount in dispute exceeds \$300,000, a panel of three arbitrators selected at random by the Alternate Dispute Resolution Office will decide the arbitration.

(e) *Conduct of arbitration.* The arbitration will be conducted in a manner determined by the arbitrator consistent with guidelines established by the Alternate Dispute Resolution Office. The Alternate Dispute Resolution Office will provide these guidelines upon request.

(f) *Hearings.* The arbitrator may convene a hearing at a location designated by the Alternate Dispute Resolution Office. Whenever possible hearings will be held in Los Alamos, New Mexico unless the parties jointly agree to a different location.

(g) *Decision.* After reviewing the evidence, the arbitrator(s) will render a decision in writing to the Alternate Dispute Resolution Office. The Alternate Dispute Resolution Office will transmit the decision to the Claimant and the Director of OCGFC. If a panel